

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Kuitt
 #8/Setter
 R. Morgan
 3/1/93

Applicant: Thomas J. Campana, Jr., et al.

Serial No.: 07/702,939

Art Unit: 2601

Filed: May 20, 1991

Exm: Oehling

For: ELECTRONIC MAIL SYSTEM WITH RF
COMMUNICATIONS TO MOBILE PROCESSORS

AM 11:45 AM 260

Notice of Ongoing Litigation

RECEIVED
 Commissioner of Patents and Trademarks
 Attn: Robert Gray
 Group Director
 Group 260
 Washington, D.C. 20231

Dear Sir:

The enclosed photocopy is being submitted as proof of ongoing litigation in the above identified pending patent application to establish the actual ownership of the subject matter of this invention.

In light of the foregoing situation, it is respectfully requested that access to this file be restricted to the following individuals and their authorized representatives pending the conclusion of the litigation.

Thomas J. Campana Jr., et al.

The inventors of record

William H. Wright

The attorney of record

Donald E. Stout

The assignee of record

Given the potential commercial value of the subject matter of this invention, it is imperative that the contents of this application be maintained in the strictest confidence until the matter of actual ownership of the subject invention has been finally resolved.

Respectfully submitted,

BY William H. Wright
 William H. Wright
 Reg. No. 26,424

February 16, 1993
 HENDERSON & STURM

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMPUTER LEASCO, INC.,

Plaintiff,

v.

Case No. 90-CV-60007-AA

TELEFIND CORPORATION,

Hon. George La Plata

Defendant.

NTP, INC.,

Applicant for
Intervention

HYMAN AND LIPPITT, P.C.

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NTP, INC.'S MOTION FOR TEMPORARY
RESTRANING ORDER AND ORDER TO SHOW CAUSE

NTP, Inc. ("NTP"), by its attorneys Dykema Gossett,

hereby moves for entry of a Temporary Restraining Order and Order to Show Cause, in the form of Orders attached hereto. This motion is based upon the accompanying Brief, and Affidavits of Thomas J. Campana, Jr. and Jonathan D. Rowe, together with exhibits attached thereto and all other pleadings in this case.

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Dated: February 16, 1993

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TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

TO: Computer Leaseco, Inc., its agents, attorneys and
representatives.

IT IS HEREBY ORDERED THAT:

(1) You shall refrain from any use of the Court's February 5, 1993 Order in the captioned case to claim any ownership rights regarding the patent applications and intellectual properties developed by Thomas J. Campana, Jr., known as the "B Technology", including, without limitation, any presentation of the Court's February 5, 1993 Order to the United States Office of Patents and Trademarks, until such time as this Order is dissolved;

(2) If you have already obtained access to the patent applications known as the "B Technology" prior to receiving this Temporary Restraining Order, you shall immediately return all copies to counsel for NTP, Inc., together with a signed, sworn representation that you have neither retained nor distributed to third parties any copies thereof;

(3) You shall appear before this Court on _____ at _____, or as soon thereafter as counsel may be heard, and show cause why a Preliminary Injunction should not be issued.

Hon. George LaPlata
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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BRIEF IN SUPPORT OF NTP, INC.'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

NTP, Inc. ("NTP"), by its attorneys Dykema Gossett,

submits this Brief in support of its Motion for Temporary Restraining Order and Order to Show Cause. NTP's Motion to Intervene and Motion to Stay Order, filed on February 11, 1993, are already pending before this Court.

STATEMENT OF FACTS

On February 5, 1993, this Court entered an Order in the captioned case which by its terms became effective on February 12, 1993. This Order is attached as Exhibit 1 to the Affidavit of Jonathan D. Rowe and will be referred to hereafter as "the Order."

The Order awards Computer Leaseco, Inc. ("Leaseco") ownership rights in certain specified intellectual property, including four patent applications developed by Thomas Campana, Jr. and known as the "B Technology." The Order carefully limits the rights granted to Leaseco "to the extent of Defendant [Telefind Corporation]'s ownership."

Unfortunately, the Order also includes an arguably conflicting provision which states in pertinent part:

The intellectual properties including, without limitation, all ... patent applications as described in Exhibit A ... are awarded to Plaintiff in which Defendant as of the date of this Order has any ownership interest. Said intellectual properties specifically includes, without limitation all technologies, inventions, patents or patent applications ... conceived, invented or developed by Thomas J. Campana, Jr.

This provision could be read to state that "all patent applications conceived by Thomas J. Campana, Jr." are "awarded

to plaintiff" even though NTP believes that such as result was not intended by the Court.

NTP is the true owner of the "B Technology." See Affidavit of Thomas J. Campana, Jr. If any person other than NTP or its authorized agents were to use the Order to gain access to the four patent applications at the patent office, NTP would suffer serious and irreparable injury. For example, an unauthorized person gaining access to the patent applications could make photocopies of the information constituting the B Technology, and could then offer that information for sale to innocent third parties unaware of the improper means used to obtain the information.

Because NTP doubts that it was the Court's intention to render any decision on the ownership of the patent's application, NTP moved to intervene in this case on February 11, 1993, for the limited purpose of moving to stay the Order until a new clarification. NTP filed a Motion to Stay the Order on February 11, 1993. Undersigned counsel has contacted counsel of record for Leaseco, who advises that Leaseco will not oppose the motion to intervene, but will oppose the motion for stay.

Meanwhile, on February 15, 1993, Leaseco's patent counsel, Donald L. Wenskay, wrote to NTP's patent counsel, William H. Wright, in a letter attached as Exhibit 2 to the Affidavit of Jonathan D. Rowe. In the letter, Mr. Wenskay demands that Mr. Wright renounce his power of attorney for the Campana patent applications owned by NTP, based upon the

Order. Mr. Wenskay further indicates his intention to present the Order "promptly" to the United States Patent & Trademark Office to revoke Mr. Wright's power of attorney if Mr. Wright does not renounce it.

Attached as Exhibit 3 to the Affidavit of Jonathan D. Rowe is a letter from Mr. Wright indicating that he will not renounce his power of attorney, because of his understanding that the Court did not intend to resolve any ownership issues between Leaseco and third parties such as NTP. Hence there is a present and immediate danger that Mr. Wenskay will attempt to use the Order to gain access improperly to the patent applications that set forth the B Technology.

Leaseco is in fact well aware that it has no valid claim to ownership of the B Technology. Leaseco's claim to the B Technology is predicated on two false premises: (1) the B Technology is owned by Telefind; and (2) Leaseco has superior lien rights to enable it to stand in Telefind's place as the owner of the B Technology. In fact, as Leaseco knows, the B Technology is owned by NTP, not Leaseco, see Affidavit of Thomas J. Campana; and in any event, Leaseco knows that it has only the third or fourth priority among the lien claimants to Telefind's intellectual property.

Leaseco has been involved in litigation in the United States Bankruptcy Court for the Southern District of Florida over the lien rights to properties owned by Telefind. United States Bankruptcy Judge Bernice Donald has ruled that the superior lien claimant for Telefind's intellectual property is

Antonelli, Terry, Stout & Wands ("Antonelli"). See Exhibit D to Affidavit of Jonathan D. Rowe, the October 19th, 1992 Order of Judge Donald at p 2 ("Antonelli has a lien on the intellectual property of Telefind Corporation ... which is senior to the liens of Computer Leaseco, Inc. and Flatt Morris Associates, S.A."). Leaseco has also conceded in that litigation that the interests of Delta Satellite Corporation ("Delta") are superior to Leaseco's. See Exhibit E to Affidavit of Jonathan D. Rowe, the June 26, 1992 Brief of Computer Leaseco in Support of its Motion for Summary Judgment in the Florida Bankruptcy Court, at p 8. The issue of priority between Leaseco and Flatt Morris Associates has not yet been resolved in the Florida Bankruptcy Court, and hence it is undetermined whether Leaseco stands third or fourth in line for Telefind's intellectual property.

ARGUMENT

A temporary restraining order is immediately necessary to preserve the status quo and to prevent Mr. Wenskay or other agents of Leaseco from seeking access to NTP's patent applications. The standards for such provisional equitable relief are well established. The Court has discretion to grant such relief to preserve the status quo and to prevent irreparable injury for which there is no adequate remedy at law. Pan American World Airways v Flight Engineers Int'l Ass'n, 306 F2d 840, 842 (2d Cir. 1962).

In this case, the "status quo" prior to the Order was that NTP owns the patent applications, as reflected in the correspondence between Mr. Wenskay and Mr. Wright. The Order

constitutes an adjudication of rights between Leaseco and Telefind, but does not involve an adjudication of NTP's rights; and hence the status quo continues to be that NTP owns the patent applications. NTP's ownership rights should be preserved by means of a temporary restraining order unless and until Leaseco presents persuasive evidence to the Court to show that it is the rightful owner of the B Technology.

Of course, Leaseco has little likelihood of success on the merits, because the Florida Bankruptcy Court's Order demonstrates that Leaseco's interest in the Telefind intellectual property is subordinate at least to the interests of Antonelli and Delta, and perhaps to Flatt Morris as well. But in any event, NTP need not demonstrate "likelihood of success on the merits" at this juncture, because the test for issuance of a temporary restraining order is simply maintenance of the status quo. See Palmigiano v Travisono, 317 F Supp 776, 787 (D.R.I. 1970).

Since NTP will suffer irreparable injury if Leaseco or its agents gains access to the Campana patent applications, NTP respectfully requests that this Court enter a Temporary Restraining Order and Order to Show Cause.

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Dated: February 16, 1993

Patent Trademark 780.29643X00
Serial No. _____ Filed May 20, 1991
Applicant(s) Thomas J. CAMPANA, Jr. et al
Papers filed herewith on May 20, 1991
 Fees \$ 973.00 Assignment
 New Application & ~~Design~~ Letter to Draftsman
 Amendment Priority Documents
 Notice of Appeal Petition for Ext. of Time
 Appeal Brief 12 Sheets of ~~Blank~~ Informal Drawings
 Other Appendix 114 pgs Small Entity Declaration
~~Information~~ (Independent Inventor)
6 U.S. Pats., 2 Jap. Pats., 1 Art. and
1 Publication
Receipt is hereby acknowledged of the papers filed as indicated in connection with
above identified case. COMMISSIONER OF PATENTS AND TRADEMARKS
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